

**Before the State of South Carolina
Department of Insurance**

In the matter of:

Employers Life Insurance Company

333 South Pine Street
Spartanburg, South Carolina 29302

SCDOI File Number 113348

**Consent Order
Imposing Administrative Penalty**

This matter comes before me pursuant to an agreement entered into between the State of South Carolina Department of Insurance and Employers Life Insurance Company (the Company), a South Carolina domestic insurer licensed to transact insurance business within the State of South Carolina. Summarized below are the pertinent facts:

During an organizational examination of the Company's records conducted in the first quarter of 2001, the Department determined that the assets of the Company had been pledged to secure a loan in violation of § 38-5-120 of the S.C. Code, which authorizes suspension or revocation of the certificate of authority if a pledge may affect the solvency of the insurer. The Company was directed to take immediate corrective action. Also, during 2001, the Company made an unauthorized loan of \$750,000 to its parent in violation of § 38-21-250. Based upon the repayment of the loan, no administrative disciplinary action was taken at that time.

Additionally, the Company was directed to file its management and other affiliated agreements with the Department for approval. To date, all affiliated and related party agreements to which the Company is a party have not been filed. An examination was conducted in March 2002 because the Department had some concerns about the capital and surplus position of the Company. This target examination revealed that there were capital and surplus issues and the Company was instructed to infuse an additional \$1,000,000 in capital into the Company. The requisite capital was infused during May 2002. As a part of the Department's due diligence and analysis process, the Department also discovered that a transfer of 40% of the stock of the holding Company had occurred, which gave a controlling interest in the Company to a Mr. Tim Brown. This transaction was entered into without making the requisite filings in accordance with S.C. Code Ann. §§ 38-21-10, 38-21-60, 38-21-70, and 38-21-90. Mr. Brown, by virtue of that transaction, had acquired a controlling interest (40%) in the holding company, which directly controls the Company's stock interest, thus ultimately having direct control of the Company. This unauthorized transaction was discussed with representatives of the Company and Mr. Brown on or about June 24, 2002.

Moreover, the Department determined that sworn financial statements submitted by the Company to the Department contained false and/or misleading information. The registration statement filed with the Department indicated a Mr. William Worthy owned 100% of the stock of the Company. This information was not true and had not been true since February 2001, when Mr. Brown acquired a controlling interest in the holding Company.



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The Company's management was informed during the exit conference for the March 2002 examination, and on other occasions including the meetings on June 19, 2002 and June 24, 2002, that it should not enter into any management agreements or other transactions between affiliates or related parties without first submitting those agreements to the Department for approval. The Company was also informed that any transactions involving a transfer of the securities of the Company of more than 10% had to be approved by the Department.

At this time, all management and cost sharing agreements have not been filed for Department approval, nor has a Form A filing been submitted to this Department. Based upon the prior violations, the unauthorized transaction involving Mr. Brown, and Company's responses to questions during the June 24, 2002 meeting, the Department conducted another target examination of the holding company and its affiliated and related parties, including the Company's general expenses, premium receivables and amounts due from affiliated companies and related parties. The examination commenced June 25, 2002 and ended July 16, 2002. That examination revealed several additional violations of South Carolina's insurance laws. Listed below are the additional violations:

Section 38-5-120 authorizes the director or his designee to revoke or suspend certificates of authority granted to an insurer and its officers and agents if he is of the opinion upon examination or other evidence that one or more of the conditions in that section exist. The pertinent provisions of that section read as follows:

- (1) The insurer is in an unsound condition.
- (2) The insurer has not complied with the law or with the provisions of its charter.
- (3) The insurer's condition renders its proceedings hazardous to the public or its policyholders. For the purpose of the application of this item, one or more of the following standards may be considered by the director or his designee in determining whether the continued operation of an insurer transacting insurance business in this State is hazardous to the public or its policyholders:
 - (a) adverse findings reported in financial condition and market conduct examination reports;
 - ...
 - (g) whether an affiliate, a subsidiary, or a reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;
 - (h) contingent liabilities, pledges, or guaranties which individually or collectively involve a total amount which in the opinion of the director or his designee may affect the solvency of the insurer;
 - ...
 - (k) whether the management of an insurer, including officers, directors, or other persons who directly or indirectly control the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation necessary to serve the insurer in that position;
 - ...
 - (l) whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;



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(m) whether management of an insurer has filed a false or misleading sworn financial statement, released a false or misleading financial statement to lending institutions or to the general public, made a false or misleading entry, or omitted an entry of a material amount in the books of the insurer;

...

(6) The insurer has not complied with a lawful order of the director or his designee.

Failure to submit management/cost-sharing agreements to the Department for approval is a violation of § 38-21-250 (2)(iv) of the South Carolina Code, which reads:

The following transactions involving a domestic insurer and any person in its holding Company system may not be entered into unless the insurer has notified the department in writing of its intention to enter into the transaction at least thirty days prior thereto, or such shorter period as the director or his designee may permit, and the director or his designee has not disapproved it within such period:

...

(iv) all management agreements, service contracts, and all costs-sharing arrangements;

In addition, filing sworn financial statements containing false information constitutes a violation of §§ 38-5-120 and 38-21-140 (3)(b) of the South Carolina Code, which reads:

Every insurer subject to registration shall file the registration statement on a form prescribed by the director or his designee, which must contain the following current information:

...

(3) The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates; including but not limited to:

...

(b) purchases, sales, or exchanges of assets;

...

(e) management agreements, service contracts, and cost sharing arrangements.

As cited above, Section 38-5-120 of the South Carolina Code provides the Director of Insurance with the authority to revoke or suspend the certificate of authority of an insurer which fails to comply with South Carolina's insurance laws. Alternatively, in accordance with §§ 38-5-130 and 38-2-10, the Director of Insurance may impose an administrative fine up to \$30,000 per violation.

The Company hereby admits, and I find as fact, that it committed the violations summarized above. The Company has alleged that these violations of South Carolina statutes



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were completely unintentional. However, these actions are a direct violation of the South Carolina insurance laws and can ultimately lead to the revocation of the insurer's certificate of authority pursuant to S.C. Code Ann. § 38-5-120 (2002) to transact the business of insurance within the State of South Carolina, subject to the insurer's right to a public hearing before the Administrative Law Judge Division.

Rather than contest this matter, the parties have agreed to submit the entire matter to me, along with their specific recommendation, for my summary decision. That consensual recommendation was that the Company would waive its right to a public hearing and would submit an administrative penalty through the Department in the total amount of \$50,000.

After a thorough review of the matter, carefully considering the recommendation of the parties, and pursuant to my findings of fact, I hereby conclude as a matter of law that the Company has violated the code sections summarized above. Accordingly, I hereby impose an administrative penalty in the amount of \$50,000 against the Company pursuant to the discretion provided to me by the State of South Carolina General Assembly in S.C. Code Ann. §§ 38-5-130 and 38-2-10 (2002). The Company must pay this administrative penalty within ten days of my date and my signature upon this consent order. If the Company has not paid that total amount on, or before, that date, then its certificate of authority to transact business as an insurer within the State of South Carolina will be summarily revoked without any further administrative disciplinary proceedings.

The parties have reached this consensual resolution as a result of negotiation and compromise, and in consideration of the internal corrective measures the Company has implemented to prevent these problems from recurring. The Company specifically agrees to submit all management and stock ownership agreements to the Department for prior approval in accordance with South Carolina law. The parties expressly agree and understand the Company's payment of the agreed-upon penalty constitutes full accord and satisfaction of this matter.

By the signature of one of its officers or authorized representatives upon this consent order, the Company acknowledges that it understands that this administrative disciplinary order is a public record subject to the disclosure requirements of the State of South Carolina's *Freedom of Information Act*, S.C. Code Ann. §§ 30-4-10, *et seq.* (1991 and Supp. 2001).

Nothing contained within this administrative disciplinary order should be construed to limit, or to deprive any person of, any private right of action under the law. Nothing contained within this administrative disciplinary order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement or judicial officer. Nothing contained within this administrative disciplinary order should be construed to limit the statutory duty, pursuant to S.C. Code Ann. § 38-3-110 (Supp. 2001), of the Director of Insurance, exercised either directly or through the Department, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report."

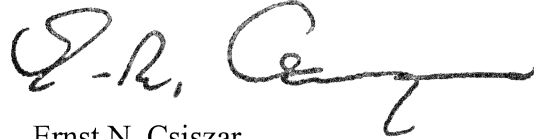


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It is, therefore, ordered that Employers Life Insurance Company shall, within ten days of my date and my signature upon this consent order, pay through the Department an administrative penalty in the total amount of \$50,000.

It is further ordered that a copy of this consent order shall be immediately transmitted to the National Association of Insurance Commissioners for distribution to its member states.

This consent order becomes effective on the date of my signature below.

A handwritten signature in dark ink, appearing to read "E.N. Csiszar", with a long horizontal flourish extending to the right.

Ernst N. Csiszar
Director

Oct 7, 2002, at
Columbia, South Carolina

A handwritten signature in dark ink, appearing to read "Wm", with a small flourish.

Employers Life Insurance Company

I CONSENT:

W M Worshy
Signature of Authorized Representative

William M. Worshy
Name

President
Title

Employers Life Insurance Company
333 South Pine Street
Spartanburg, South Carolina 29302

Dated this 3rd day of Oct., 2002